

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

**CASSIE M., by Next Friend Kymberli Irons;)
ANDREW C., by Next Friend Gregory C.)
Elliott; MATTHEW R., by Next Friend)
Gregory C. Elliott; ERIN M., by Next Friend)
Elaine Macintosh; and SEAN M., by Next)
Friend Elaine Macintosh, for themselves and)
those similarly situated*,)**

Plaintiffs,

v.

**GINA M. RAIMONDO, in her official)
capacity as Governor of the State of Rhode)
Island; ELIZABETH ROBERTS, in her)
official capacity as Secretary of the)
Executive Office of Health & Human)
Services; and KEVIN AUCOIN, in his)
official capacity as Acting Director of the)
Department of Children, Youth & Families,)**

Defendants.

**Class Action
Civil Action No. 1:07-cv-00241-S-PAS**

**FOURTH AMENDED COMPLAINT
FOR INJUNCTIVE AND DECLARATORY RELIEF
AND REQUEST FOR CLASS ACTION**

* pseudonyms are used for all minor named plaintiffs.

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I. Introduction

1. In July 2015, Governor Gina Raimondo gave a frank description of how the Rhode Island Department of Children, Youth, and Families (“DCYF”) performs for the children in its care: “Every kid deserves a chance. These families and children are facing unbelievable struggles. The way we’ve been delivering services — we’ve just been letting them down.” It’s “an agency in crisis,” the Governor reported, and an “extremely dysfunctional system.”

2. The state’s Child Advocate, Regina Costa, painted a similarly bleak picture in her testimony to the Senate Task Force on the Department in November 2014. When discussing the state’s system of care reform efforts, she testified, “[W]e should be asking, ‘Are DCYF children and families better off today than they were two years ago?’ I think the clear answer to this question has to be ‘NO.’”

3. This civil rights class action is brought on behalf of vulnerable children in the foster care custody of the state. For far too long, state officials’ actions and inactions have led to fundamental, systemic failings that place all children in their foster care custody at unreasonable risks of serious harm. Despite years of warning regarding DCYF’s deficient performance from the federal government, the Rhode Island legislature, and third-party reviewers, and despite recognition by the state itself, children in the state’s foster care still suffer unnecessary harms.

4. Plaintiffs seek declaratory and injunctive relief to remedy six of the most serious failings that, eight years after this lawsuit was initiated, continue to plague DCYF.

Specifically,

- **Defendants assign excessive caseloads to their caseworkers, making it impossible for them to monitor, serve, and visit the children in their care:** State, federal, and third-party reviews have long warned that DCYF caseworkers carry unmanageable caseloads. These caseloads far exceed

professional standards and prevent caseworkers from undertaking tasks that are critical to children's safety and well-being, including adequate and timely visitation with children in care. In March 2012, for example, nearly one-third of children in out-of-home care did not have a documented face-to-face visit with their caseworker. Caseloads have only increased since that time. In 2015, the Governor's Resource Team reported that "[c]aseloads are incredibly high for DCYF staff causing low morale and turnover."

- **Defendants fail to appropriately license and oversee foster care placements:** The DCYF licensing unit is inadequately staffed and overburdened, leaving it unable to ensure the basic safety of foster homes and institutions in which children are placed. As of April 2012, for example, 159 children in DCYF's legal custody were living in unlicensed non-kin foster care placements.
- **Defendants fail to adequately investigate abuse and neglect in foster care:** CPS Division investigators are assigned caseloads that far exceed professional standards. From February 2012 to August 2012, for example, the majority of CPS investigators carried caseloads that were twice the highest number provided for by professional standards. Faced with such an unmanageable workload, investigators are unable to adequately investigate and timely complete investigations of abuse or neglect of children in foster care.
- **Defendants fail to maintain an adequate placement array to meet the needs of all children in care, and as a result, children are placed in inappropriate and/or unsafe placements:** Federal law and widely-recognized professional standards require that children in foster care be placed in the least restrictive, most family-like setting suited to their needs. In Rhode Island, however, children who need family placements are too often warehoused in group facilities due to the lack of appropriate foster homes. Twenty-nine percent of the state's foster children live in expensive emergency shelters, group homes, and other institutions — a rate more than twice the national average.
- **Defendants fail to provide children with timely and adequate case plans:** Preparing case plans is a federally-mandated child welfare practice that is vital to children's safety and well-being while in foster care. DCYF fails to ensure, however, that children are provided with complete and timely case plans. For the period from February 1, 2015 to April 30, 2015, for example, only 43.94 percent of case plans reviewed by the agency in Region 1 (the most populous of the regions), 28.81 percent in Region 2, 65.38 percent in Region 3, and 47.29 percent in Region 4 were written in a timely manner and included measurable behavioral change outcomes.
- **Defendants do not provide adequate foster care maintenance payments to foster parents:** Compliance with federal law requires DCYF to pay maintenance payments to family foster care providers to cover the costs

associated with caring for children. The rates paid to Rhode Island's foster parents, however, are far below the costs associated with caring for children in foster care.

5. Plaintiff Children suffer serious harms, and daily confront an unreasonable risk of harm, as a direct result of these failings. For example,

- **Plaintiff Children suffer abuse or neglect in foster care at startling rates:** Since Federal Fiscal Year ("FFY") 2004, children in DCYF's custody have been subjected to abuse or neglect at a rate of between two and over four times the federal benchmark for acceptable practice. In FFY 2013 alone, DCYF reported 71 incidents of abuse or neglect of children in their care.
- **Plaintiff Children's developmental and emotional well-being is harmed by overly restrictive group care:** Most children need to live with families and not in institutions. Placement in overly restrictive group homes, shelters, and institutions can cause significant developmental and emotional harms. This is especially true for young children.
- **Plaintiff Children are unnecessarily separated from their siblings:** The state's inadequate placement array leads to the unnecessary separation of siblings — often the main source of stability in the life of a child in foster care. Rhode Island's Child Advocate testified that "limited resources in the foster care system have resulted in," among other things, "[s]eparation of siblings who come into care." Sibling relationships are further disrupted when overburdened DCYF staff are then unable to ensure visits for siblings who are not placed together. In 2010, for example, the federal government found that siblings not placed together had monthly visits in only 60 percent of applicable cases.

6. This lawsuit seeks to compel Defendants — the Governor of the State of Rhode Island, the Secretary of the Executive Office of Health and Human Services, and the Director of the Department of Children, Youth and Families — to meet their legal obligations to care for and protect Rhode Island's abused and neglected children in state custody.

II. Jurisdiction and Venue

7. This action is brought pursuant to 42 U.S.C. § 1983 to redress violations of the United States Constitution and federal statutes. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

8. Venue is proper here pursuant to 28 U.S.C. § 1391(b). The claims arise in this district.

III. Class Action Allegations

9. This action is properly maintained as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

10. The Class is defined as “all children who are or will be in the legal custody of the Rhode Island Department of Children, Youth and Families due to a report or suspicion of abuse or neglect” (“Plaintiff Children”). As of November 2014, approximately 1,800 children were in the legal custody of DCYF for foster care services due to reported or substantiated allegations of abuse or neglect. The Class is sufficiently numerous to make individual joinder impracticable.

11. The questions of law and fact raised by the Named Plaintiffs’ claims are common to and typical of those of the Plaintiff Children they seek to represent. Named Plaintiffs are all children in Defendants’ legal custody who rely on Defendants for their safety and well-being. They are at a common risk of harm by the systemic deficiencies of Rhode Island’s child welfare system.

12. Questions of fact common to the Class include:
- a. Whether Defendants fail to protect Plaintiff Children from abuse and neglect through inadequate provision of casework, visitation, licensing, and investigation services, causing significant harm to their health and well-being;
 - b. Whether Defendants fail to provide Plaintiff Children with safe foster care placements, causing significant harm to their health and well-being;
 - c. Whether Defendants fail to maintain an adequate statewide placement array that enables them to place Plaintiff Children in the least restrictive and most family-like settings suited to their needs

in compliance with federal law, and to avoid unnecessary placement in institutional and group facilities that may cause significant harm to children's health and well-being;

- d. Whether Defendants fail to provide Plaintiff Children with the supports necessary to maintain family relationships where appropriate, including placing siblings together and providing children with vital parent and sibling visits, causing significant harm to their health and well-being;
- e. Whether Defendants fail to provide Plaintiff Children with timely case plans containing federally mandated elements as required by the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, and relevant federal regulations; and
- f. Whether Defendants fail to provide adequate foster care maintenance payments as required by the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, and relevant federal regulations.

13. Questions of law common to the Class include:

- a. Whether Defendants' actions and inactions violate Plaintiff Children's substantive due process rights to be free from harm while in state custody, guaranteed by the Fourteenth Amendment to the United States Constitution;
- b. Whether Defendants' actions and inactions violate Plaintiff Children's rights to family integrity, guaranteed by the First, Ninth, and Fourteenth Amendments to the United States Constitution; and
- c. Whether Defendants' actions and inactions violate Plaintiff Children's rights to timely case plans containing mandated elements and to adequate foster care maintenance payments, established by the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, and relevant federal regulations.

14. Named Plaintiffs will fairly and adequately protect the interests of the Class they seek to represent.

15. Named Plaintiffs and Plaintiff Children are represented by:

- a. Attorneys employed by Children's Rights, a nonprofit legal organization whose attorneys have substantial experience and expertise in child welfare class actions nationally;
- b. Weil, Gotshal & Manges LLP, a global private law firm with extensive experience in complex civil litigation including class action litigation and a non-litigation office in Providence; and
- c. John Dineen, a licensed Rhode Island attorney with substantial experience litigating civil rights matters in the federal courts.

16. The attorneys and entities listed above have investigated all claims in this action and have committed sufficient resources to represent the Class.

17. Each Named Plaintiff appears by a next friend, and each next friend is sufficiently familiar with the facts of the child's (or children's) situation to fairly and adequately represent the child's (or children's) interests in this litigation.

18. Defendants have acted or failed to act on grounds generally applicable to the Class, necessitating declaratory and injunctive relief for the Class. Plaintiffs' counsel knows of no conflicts between or among members of the Class.

IV. The Parties

A. The Named Plaintiffs

CASSIE M.

19. Cassie is an 18-year-old girl who has been in foster care for the last nine years. Throughout her time in custody, DCYF has moved Cassie through numerous and inappropriate placements and separated her from her four sisters.

20. In February 2006, Cassie and her two sisters who had been living together in their mother's home were removed from their mother's care based on her continued failure to comply with court-ordered treatment plans.

21. DCYF placed Cassie and her two sisters into separate foster homes, with no

documented reason for the separation. DCYF moved Cassie to a new foster home less than two weeks later. In June 2006, Cassie's foster mother revealed to DCYF that she herself had been "red flagged" by DCYF. DCYF only then realized that the foster mother had an open case with DCYF and that the agency had been planning to terminate her foster parent license. Nonetheless, DCYF kept Cassie in this home for another nine months, when it moved her to a specialized foster home.

22. Also in 2006, Cassie's younger sister, who was just six years old, was placed in a shelter. DCYF kept this young girl in two shelter placements for more than nine months. Cassie was very upset that her sister was in a shelter and asked multiple times for her sister to live with her.

23. In August 2007, when she was 10 years old, DCYF moved Cassie to a residential treatment center. In this placement, Cassie was not provided the close supervision she needed and was subjected to numerous physical restraints. In September 2008, Cassie was freed for adoption, and in February 2009 Cassie's DCYF caseworker and supervisor decided she needed a specialized family home placement rather than institutional care. No home was available, however, and as a result Cassie remained in the treatment center for 16 more months. DCYF assessments from this period indicate that Cassie was not doing well in this placement.

24. In June 2010, Cassie turned 13 and aged out of her residential facility. Although Cassie continued to need a foster home, she was moved to a group home where she remained until early 2012. Between the two facilities, Cassie spent over four years in institutional placements. Cassie was next placed with a foster family for approximately one year. When that foster mother became unable to continue fostering, Cassie was returned to group care

for several weeks before moving through a string of foster family homes and ultimately returning to a group placement in February 2013.

25. In November 2013, DCYF decided to move Cassie to a lower level of care and she was placed on a waitlist. Cassie moved to the less restrictive facility in March 2014. This placement lasted just over a year, until Cassie moved into a semi-independent living program in May 2014. Cassie was placed into a transitional living program in January 2015 — her 26th out-of-home placement. During this period, Cassie began to frequently go AWOL from her program, which resulted in two brief shelter care placements. Cassie graduated from high school in 2014; however, she was assessed in 12th grade as reading at a 3rd grade level. Cassie applied to colleges but was not accepted.

26. Cassie's case file indicates that at numerous points in time, she did not have a complete and updated case plan that included all federally required elements. Cassie's plans were expired for periods of two to five months in 2012, 2013, and 2014.

27. Upon information and belief, Cassie remains in DCYF custody today and continues to be placed in the transitional living program. In July 2015, Cassie gave birth to a child who was removed into DCYF custody. As of July 2015, Cassie was neither working nor attending school.

28. As a result of Defendants' actions and inactions, Cassie has been and continues to be irreparably harmed. Defendants have violated Cassie's constitutional and statutory rights by failing to protect her from harm; by separating her from her sisters; by failing to provide her with appropriate, least restrictive placements; by failing to provide her with timely and updated case plans that include all federally mandated elements; and by failing to pay to her

foster parents a rate that covers the cost of statutory elements of care, all of which are required by law and widely-recognized professional judgment.

29. Named Plaintiff CASSIE M. appears through her next friend Kymberli Irons. Ms. Irons has worked in the Providence School Department for over 20 years and has been a special educator for approximately 30 years. Ms. Irons holds Master's degrees in Special Education and in Integrated Education. She has served as a Behavior Specialist with the Providence School Department for over 10 years. Ms. Irons worked with Cassie as her Behavior Specialist when Cassie was between the ages of eight and nine. Ms. Irons also met with Cassie's mother, and spoke with Cassie's classroom teacher, principal, and assistant principal about Cassie on multiple occasions. Ms. Irons is fully capable of representing Cassie's best interests.

ANDREW C.

30. Andrew is a nine-year-old boy who has been in DCYF custody since he was four years old. During his time in foster care, he has experienced at least one inappropriate placement — where his foster parent was unable to properly care for him, leading to his hospitalization — has suffered sexual abuse while in group care, and has been separated from his younger siblings.

31. Andrew entered DCYF custody in October 2010 after his mother suffered a psychotic episode and was arrested.

32. Initially, Andrew was placed in a treatment foster home in Woonsocket with his younger sister. He also had an older half-sibling who was placed with their grandfather in New York. Although Andrew was stable in the treatment foster home, the foster mother did not want to adopt Andrew. He remained in this home for three and a half years.

33. In March 2014, DCYF moved Andrew and his sibling into the home of a woman who had visited Andrew while in his previous home and acted as his "mentor." DCYF

placed Andrew in this pre-adoptive home over multiple objections — including by Andrew’s clinician, service providers and his school — that the foster mother did not demonstrate the ability to manage Andrew’s behaviors. While Andrew was in this home, the foster mother was unable to properly care for him and would regularly resort to calling 9-1-1 to manage even minor behavioral issues, such as Andrew refusing to put on his shoes. Soon after his placement in this home, Andrew was hospitalized due to behavior issues.

34. DCYF subsequently moved Andrew into a group care placement.

Andrew’s younger sibling remained in the pre-adoptive home. Upon information and belief, Andrew has been separated from this sibling since leaving the pre-adoptive home.

35. Upon information and belief, while in group care, Andrew was sexually abused by boys while on a bus. Andrew subsequently began to act out sexually, and could in DCYF’s judgment no longer be placed in homes with younger children, including his sister.

36. Upon information and belief, as of the spring of 2015, Andrew remained in group care.

37. As a result of Defendants’ actions and inactions, Andrew has been and continues to be irreparably harmed. Defendants have violated Andrew’s constitutional and statutory rights by failing to protect him from harm; by separating him from his sibling; and by failing to provide him with appropriate, least restrictive placements, all of which are required by law and widely-recognized professional judgment.

38. Named Plaintiff ANDREW C. appears through his Next Friend, Gregory C. Elliott. Dr. Elliott is Professor of Sociology at Brown University in Providence, Rhode Island, where he has taught for over 30 years. Dr. Elliott is a social psychologist, specializing in the development of the individual. In his work he has dealt with issues of child maltreatment and the

integration of the individual into society. Due to his expertise and research, Dr. Elliott has been held by the First Circuit in this case to be “aware of the issues and problems children face in foster care and he is familiar with the perils to which Plaintiffs have been exposed,” and therefore declared an appropriate next friend for four named plaintiff children whom he did not know personally in the instant lawsuit. *Sam M. ex rel. Elliott v. Carcieri*, 608 F.3d 77, 93 (1st Cir. 2010).

MATTHEW R.

39. Matthew is an eleven-year-old boy who has been in DCYF care for approximately three years. During that time, he has been placed in a kinship home where a registered sex offender was living, sexually abused by another child in a foster home, and separated from his two older siblings.

40. On information and belief, Matthew was removed by DCYF for parental neglect in late 2011 or early 2012 and placed with a paternal aunt in a kinship placement in Woonsocket. He was removed from that placement in March 2012 because a registered sex offender was living in the home.

41. DCYF subsequently placed Matthew in a foster home in Woonsocket. However, due to problems with the biological daughter of the foster parent, Matthew was removed from this placement in February 2013 and placed in a different foster home.

42. Matthew bonded with the foster parents in the new foster home. Two other boys residing in the home were approximately two or three years older than Matthew. Matthew eventually disclosed to his foster parents that one of the older boys had been dry humping him. After further discussions, it became apparent that the older boy had engaged in additional forceful sexual conduct with Matthew. Both of the older boys in the home were removed, but Matthew remained in the home initially.

43. DCYF investigated the home and initially concluded that there was no negligence on the part of the foster parents, but later reversed its finding and indicated the foster parents for lack of supervision. Matthew was removed in June 2014 and placed in a different treatment foster home. The foster parents subsequently appealed the indication of lack of supervision and it was overturned.

44. Although Matthew's permanency goal for his early years in foster care was reunification, in June 2013 DCYF learned that his mother was pregnant again and had failed to notify DCYF. DCYF subsequently moved for termination of parental rights.

45. While in foster care, Matthew has not been placed with either of his two older siblings.

46. Upon information and belief, Matthew remains in care in the foster home placement to which he was moved in June 2014.

47. As a result of Defendants' actions and inactions, Matthew has been and continues to be irreparably harmed. Defendants have violated Matthew's constitutional and statutory rights by failing to protect him from harm; by separating him from his siblings; and by failing to provide him with safe and appropriate placements, all of which are required by law and widely-recognized professional judgment.

48. Named Plaintiff MATTHEW R. appears through his Next Friend, Gregory C. Elliott. Dr. Elliott is Professor of Sociology at Brown University in Providence, Rhode Island, where he has taught for over 30 years. Dr. Elliott is a social psychologist, specializing in the development of the individual. In his work he has dealt with issues of child maltreatment and the integration of the individual into society. Due to his expertise and research, Dr. Elliott has been held by the First Circuit in this case to be "aware of the issues and problems children face

in foster care and he is familiar with the perils to which Plaintiffs have been exposed,” and therefore declared an appropriate next friend for four named plaintiff children whom he did not know personally in the instant lawsuit. *Sam M.*, 608 F.3d at 93.

ERIN M. and SEAN M.

49. Erin is a two-year-old girl and Sean is a four-month-old boy. Both children were removed from their mother at birth and placed into the same kinship foster home. During their time in care, Erin and Sean have been separated from their older sibling without adequate visitation and their foster parents have received only the basic foster care board rate for their care.

50. Erin and Sean have an older half-brother, S., who is nine years old. S. was removed from his mother due to drug issues, reunited, and removed again in 2011 when he was about five. Upon his second removal, S. was briefly placed in a foster home before being placed with his maternal grandmother, Elaine Macintosh. Ms. Macintosh has cared for S. continuously since then and has an active foster parent license. In January 2015, Ms. Macintosh took permanent guardianship of S.

51. Erin was born in 2013. On information and belief, she was removed at birth due to her mother’s ongoing drug issues. At that time, Ms. Macintosh offered to care for Erin together with S. DCYF, however, placed Erin in a fictional kin home with her mother’s boyfriend’s sister and her husband. The kinship foster parents only speak Spanish, a language that the biological mother, Ms. Macintosh, and S. do not speak.

52. Sean was born in May 2015. At the time of his birth, his mother had been clean for seven months and was complying with all services in her service plan. Nevertheless,

DCYF placed a hold on Sean and then removed him into custody. Ms. Macintosh offered to care for Sean, but DCYF instead placed him with Erin in the kinship foster home.

53. On information and belief, Erin and Sean share the same small bedroom with their kinship foster parents. There are safety concerns about the home.

54. On information and belief, the kinship foster parents have received and continue to receive only the basic foster care board rate for Erin and Sean's care.

55. Erin, Sean, and S. were assigned to the same caseworker from S.'s initial entry into care through late August 2015 ("the DCYF caseworker"). Throughout the four years that S. was in DCYF custody and placed with Ms. Macintosh, the DCYF caseworker visited him in placement only four or five times. Several times, the DCYF caseworker failed to show up for scheduled visits. On information and belief, the DCYF caseworker and his replacement have also failed to make required visits with Erin and Sean.

56. In August 2015, in response to a request from Ms. Macintosh and the children's mother, the family court judge ordered that DCYF assign a new caseworker to the family's case. Ms. Macintosh and the children's mother had been requesting a new caseworker for three years prior to entry of this order.

57. The DCYF caseworker and his replacement have failed to facilitate and ensure visitation between Erin, Sean, and S. On information and belief, the family court ordered weekly visitation between Erin and S., and later included Sean as well. The DCYF caseworker and his replacement have not ensured that such visitation took place, leaving the matter up to Ms. Macintosh and the kinship foster parents. Though Ms. Macintosh requested help from DCYF in arranging visits and obtaining the kinship foster parents' cooperation, no help was provided. As a result, Erin and Sean have not regularly visited with S. during their time in care.

58. Upon information and belief, Erin and Sean remain placed in the fictive kinship foster home where they were placed upon entering care.

59. As a result of Defendants' actions and inactions, Erin and Sean have been and continue to be irreparably harmed. Defendants have violated Erin and Sean's constitutional and statutory rights by failing to provide adequate foster care maintenance payments, by separating them from their sibling S., and by failing to provide them with safe and appropriate placements, all of which are required by law and widely-recognized professional judgment.

60. Named Plaintiffs ERIN M. and SEAN M. appear through their Next Friend, Elaine Macintosh. Ms. Macintosh is the children's biological grandmother and has permanent guardianship of their half-brother, S. Ms. Macintosh has been involved with both Erin and Sean since their births and is aware of their experiences and issues in state custody. She is also a former gymnastics teacher with 27 years of experience teaching disabled children and adults. Ms. Macintosh is fully capable of representing Erin and Sean's best interests as their Next Friend.

B. The Defendants

61. Defendant GINA M. RAIMONDO is the Governor of Rhode Island and is sued in her official capacity. Pursuant to Article IX, Section 1 of the Constitution of Rhode Island of 1986, the executive power of the state is vested in the Governor. Pursuant to Article IX, Section 2 of the Constitution of Rhode Island of 1986, the Governor is responsible for ensuring that all executive departments and agencies within the state, including DCYF, faithfully execute and comply with applicable federal and state law. Governor Raimondo maintains her principal office at the Office of the Governor, State House, 82 Smith St., Room 115, Providence, Rhode Island, 02903.

62. Defendant ELIZABETH ROBERTS is the Secretary of the Executive Office of Health and Human Services in Rhode Island and is sued in her official capacity. The Executive Office of Health and Human Services provides common strategic planning, fiscal management, and related policy and programmatic oversight to and across designated human services departments within the Rhode Island executive branch, including DCYF. Secretary Roberts maintains her principal office at the Pastore Complex, Louis Pasteur Building, 600 New London Ave., Cranston, RI 02920.

63. Defendant KEVIN AUCOIN was named the Acting Director of the Department of Children, Youth and Families in 2015 and is sued in his official capacity. Pursuant to Section 42-72-1 of the Rhode Island General Laws, the DCYF Director is responsible for administering certain child welfare services and programs, including services and programs provided and administered by DCYF, and assuring that all such services and programs operate in conformity with constitutional, statutory, and regulatory requirements. The Director maintains a principal office at the Department of Children, Youth and Families, 101 Friendship Street, Providence, Rhode Island, 02903.

V. The Rhode Island Child Welfare System

64. The Department of Children, Youth and Families is responsible for ensuring the safety and well-being of the children it takes into custody.

65. DCYF has the duty to deliver child protective services, which include the investigation and assessment of reports of abuse and neglect occurring in family homes and in foster care placements, and the implementation of timely, appropriate corrective steps, including a child's removal from home or a foster care placement, if warranted, to keep the child safe when abuse or neglect may have occurred.

66. DCYF also has duties to ensure that children in state foster care custody are safe and to provide state-supervised supports that meet the basic needs of children in its foster care custody. Such supports include placing children in screened, licensed foster homes or other appropriate placements. Foster care supports also include the development and implementation of appropriate case plans designed to ensure appropriate placement and care.

67. Additionally, under the Adoption Assistance and Child Welfare Act of 1980 (“AACWA”), as amended by the Adoption and Safe Families Act of 1997, DCYF has a duty to provide family foster care providers with maintenance payments that cover the costs associated with (and the actual costs of) caring for children in foster care, including the costs of specific items articulated in the statute.

68. DCYF operates four regional offices responsible for case management and planning and for ensuring the delivery of necessary supports to children and families. The agency also operates a statewide Licensing Unit responsible for licensing and monitoring foster homes, adoptive homes, and group care, including relative and child-specific placements.

69. DCYF also contracts with private child-placing agencies in Rhode Island for the provision of foster care placements, including shelters, group homes, residential treatment centers, and therapeutic foster homes. DCYF remains legally responsible for every Plaintiff Child who is placed through a child-placing agency.

70. The Licensing Unit is also responsible for licensing child-placing agencies, promulgating the rules governing them and the standards that they must meet in furnishing foster care placements, and monitoring their compliance with all applicable rules and standards. The Licensing Unit is also responsible for investigating regulatory violations and enforcing child-placing agencies’ compliance with DCYF regulations and policies.

VI. Defendants' Knowledge Regarding Systemic Failings in Rhode Island's Child Welfare System

71. Defendants have long known that the state foster care system suffers from structural problems that expose children to unacceptable levels of risk. Some of these problems were identified as early as 2003, while others were identified through federal reviews in 2004 and 2010. Importantly, *all* of the structural problems identified in this Amended Complaint have been raised during the eight-year course of this litigation. Though repeatedly notified about these deficiencies, Defendants have failed to correct them, leaving the children in their care at continued risk of harm.

72. As far back as 2003, the state Systems of Care Task Force reported on the “disorganized and fragmented” child welfare agency with widespread systemic failings, including a lack of foster homes, poor placement matching, low reimbursement rates to foster parents, high caseloads and other significant unmet worker needs, and a public perception as “bureaucratic, unwieldy, [and] insensitive.” The Task Force concluded that all of these failings exposed children in the system to harm and trauma.

73. Because Rhode Island receives federal funding to operate its child welfare system, it is subject to periodic federal Child and Family Services Reviews (“CFSRs”). On the first-round CFSR, conducted in 2004, Rhode Island failed to meet numerous federal requirements. The state underperformed on measures related to maltreatment, foster parent licensing and training, placement stability, placement array, and preserving family relationships. The review also demonstrated that caseworkers failed to conduct required monthly visits with children. The state was required to address these deficiencies in a Program Improvement Plan (“PIP”).

74. In 2005, a child named T.J. Wright died while in the care of unlicensed foster parents selected for him by DCYF. The death brought widespread media attention to systemic problems at DCYF, which ultimately led the state Senate to investigate and conduct hearings on agency performance. In March 2007, the Senate passed Resolution 07-R128, which mandated biennial reporting on a range of systemic issues, including caseloads, overtime hours, and overtime costs; placement array, licensing, and foster parent training; and progress made on federal CFSR measures.

75. A second-round CFSR took place in 2010. Once again, Rhode Island failed to meet numerous federal requirements. Serious issues persisted regarding protecting children from abuse and neglect, placement stability, maintaining family connections, and case planning. On many measures, most notably maltreatment in care, the state continued to perform near the very bottom of the nation. The 2010 reviewers cited the state's need to address "systemic barriers that have a direct impact on ensuring safety and achieving permanency for children." The state was once again required to address its underperformance in a PIP.¹

76. The state has failed to remedy these performance deficiencies and remains at the bottom of the nation on key outcome measures. The state's rate of maltreatment in foster care has only worsened, increasing from 0.97 in 2010 to 1.19 in 2014. As of 2013, Rhode Island still ranked 49th on the national indicator of all children placed in congregate care.

77. In 2012, DCYF outsourced many placement and service responsibilities to two network contractors. In November 2014, Child Advocate Regina Costa reported to the Senate Task Force that children and families had rising needs and fewer options under the

¹ Due to changes in the calculations of systemic factors and outcome measures, a state's performance on the 2010 CFSR is not directly comparable to its performance on the 2004 CFSR; similarly, a state's performance on the expected third-round CFSR will not be directly comparable to either of the two previous reviews. Rhode Island is scheduled to receive its third-round CFSR in 2018.

network contracts. Between 2012 and 2014, both the number of out-of-state placements and use of the highest-level, highest-cost treatment options for children roughly doubled. In January 2015, the Senate Task Force formally concluded that the networks had consumed millions of taxpayer dollars without yielding performance returns. To remedy on-going, urgent problems in the child welfare system, the Task Force recommended reducing caseworker caseloads and turnover, reducing reliance on residential placements, increasing foster parent recruitment and reimbursement, and timely assessing the service needs of all children in care, among other things. The Task Force did not examine or make recommendations related to other key safety issues for children in care, including the rate of maltreatment, licensing, or investigations.

78. Six months later, Jamia R. McDonald, appointed by the Governor to oversee DCYF, reported no progress on implementing the caseloads, residential placements, recruitment, reimbursement, or needs assessments recommendations. She testified: “It is unacceptable that an agency charged with caring for Rhode Island’s children has so many significant challenges.”

79. As detailed below, Rhode Island’s child welfare system continues to suffer from known and serious structural problems: overwhelming caseloads, leading to inadequate casework, deficient licensing and investigation practice; abuse and neglect of children in care; a lack of adequate placement options; failure to maintain children’s family connections; failure to create timely and complete case plans; and inadequate reimbursement rates for foster parents.

VII. Systemic Child Welfare Failings and the Resulting Harms to Children

A. Common Systemic Ailments Place Children in Foster Care at Serious Risk of Harm

1. Excessive Caseloads Overburden Caseworkers, Making It Impossible for Them to Ensure Child Safety

80. No child welfare system can perform its basic functions without an adequately staffed workforce. When caseworkers are overburdened by unmanageable caseloads, as in Rhode Island, a child welfare system predictably breaks down and children suffer harm and an unreasonable risk of harm as a result.

81. The state has openly acknowledged for years that unmanageable caseloads plague the child welfare system. In 2005, the panel convened to identify systemic factors contributing to the death of T.J. Wright concluded that social worker caseloads were “untenable,” leaving the workers “unable to visit the very children they pledge to protect.”

82. Defendants also acknowledged the impact that unmanageable workloads have on caseworker performance in both rounds of the CFSR process. In its first-round CFSR Statewide Assessment, in 2003, DCYF admitted that “[t]he current level of vacancies across all line staff positions is the most severe that the Department has experienced for many years. As we seek to comply with [applicable] performance measures to achieve conformity, we will be hard pressed to change existing practices and/or implement new practice with an already overburdened staff.” In its second-round CFSR Statewide Assessment, seven years later, DCYF again indicated that caseworker workloads obstruct agency performance, hindering caseworkers from providing services and completing service plans in a timely manner.

83. Recent reviews of DCYF performance have similarly found that caseworkers continue to carry unreasonably large caseloads. In an October 14, 2014 presentation to the Senate Task Force on DCYF, the Annie E. Casey Foundation concluded that “[s]taff caseloads are unacceptably high, primarily because of high vacancy rates,” and “[w]hen this happens, staff focus on the front end of the system, not children already in placement” resulting in bad outcomes. The following month, Rhode Island Child Advocate Regina Costa testified to

the Task Force that “DCYF Family Service Staff has seen an increase of nearly 200 families on their caseloads.” She explained that “[h]igh caseloads for the [DCYF] workers and supervisors create excessive and oftentimes unattainable demands on the staff.” The Governor’s Resource Team likewise found that “[c]aseloads are incredibly high for DCYF staff causing low morale and turnover.” The Senate Task Force agreed with these findings in its 2015 report, noting that DCYF caseloads were far higher than national best practices.

84. DCYF’s own staff report that their workloads are unmanageable. In 2012, the President of the Rhode Island Alliance of Social Service Employees warned that staffing shortages endangered the safety of children and families: “They’ve burned the staff out to the point that people are saying I physically can’t do it anymore.” In a May 2014 report, the Annie E. Casey Foundation found that only 38 percent of casework supervisors rated their units as adequately staffed, and 88 percent rated their units as “under a lot of stress.” Further, 66 percent of caseworkers reported that their caseloads were unmanageable and 90 percent believed that “staff turnover negatively effects [sic] outcomes for children and families.” As one caseworker put it, in August 2015, “the caseload is not manageable. It’s crisis intervention and doing the best you can, but really, the quality casework we should be doing to effectively work with the families you can’t accommodate on a daily basis because it’s just too demanding and overwhelming.”

85. Professional standards in the field of child welfare recognize that agencies should undertake a workload analysis to determine appropriate caseload standards for their caseworkers. This assessment is critical to ensuring that caseworkers are able to complete tasks upon which children’s safety and well-being depend, including adequate caseworker visitation.

Despite years of warning regarding unmanageable caseloads, DCYF has not undertaken such a workload study.

86. Further, because of the vital role that caseworkers play, well-accepted professional standards prescribe caseload maximums. Standards published by the Council on Accreditation (“COA”), for example, state that “[n]ationally recognized caseload guidelines recommend no more than 15 children [per caseworker] in foster care or kinship care, and no more than 8 children in treatment foster care.”² The Rhode Island Legislature, in R.I. General Law § 42-72-5.3, has recognized that COA publishes nationally recognized standards for child welfare and has instructed DCYF to seek COA accreditation.

87. Departing from professional standards, DCYF does not place any limit on the number of children that can be assigned to a caseworker. As reported in its June 2013 Annual Progress and Services Report, though DCYF “strives to maintain a caseload of 14 families,” each of which may have more than one child, “there is no required caseload limit.” Assistant Director Stephanie Fogli-Terry testified in July 2012 that there was no caseload size that would trigger the agency to take steps to ensure that a caseworker’s caseload was manageable.

88. Unsurprisingly, DCYF caseworkers consistently carry caseloads that far exceed professional standards. Each month between January 2012 and January 2013, for example, approximately 23.2 percent to 35.5 percent of DCYF’s caseworkers were assigned a caseload of at least 25 children — that is, a caseload that was at least 50 percent higher than the maximums prescribed by today’s nationally accepted standards. The burden placed on DCYF’s

² In 2014, COA reduced its caseload maximum standard from 18 children per worker to 15 children per worker. The Child Welfare League of America similarly prescribes a caseload maximum of 12 to 15 children for foster care workers.

caseworkers has only worsened since then. In June, July, and August 2015, between 95 percent and 96 percent of caseworkers carried a caseload that exceeded the maximum provided by professional standards and between 55 percent and 61 percent carried a caseload of at least 25 children.

89. Unmanageable caseloads lead to a high rate of turnover among foster care caseworkers. The resulting vacancies then leave the remaining workers with even more burdensome caseloads. Turnover among DCYF staff has reached dangerously high levels. Unable to retain enough caseworkers, the agency is woefully understaffed. The Annie E. Casey Foundation found, in May 2014, that DCYF's high vacancy rate interfered with its ability to undertake case management activities and, it warned, "[n]o child welfare system can function well with this vacancy rate."

2. Caseworkers' Caseloads Leave Them Unable to Make Timely and Adequate Visits

90. Regular caseworker visits are necessary for checking on a child's safety and well-being, identifying the child's needs, and arranging and monitoring the delivery of services to meet those needs. Indeed, the federal government has determined, based on its reviews of the child welfare systems of each state, that there are significant associations between caseworker-child visitation and the safety of children in foster care. Federal law recognizes the importance of regular caseworker visits, requiring monthly caseworker visits with children in foster care. DCYF policy also requires the caseworkers to meet "face-to-face . . . at least once per month" with the Plaintiff Children on their caseloads and with those children's caregivers, and to visit foster homes at least monthly.

91. DCYF has acknowledged that high caseloads are a barrier to its ability to provide sufficient child-caseworker visitation, stating in its 2010 Statewide Assessment that

“[h]igher caseloads make it difficult to meet all of the time frames” for face-to-face visits.

92. Indeed, for years DCYF has fallen short of meeting visitation requirements for a large percentage of children in its care. Caseworker visits with children were determined to be an area needing improvement in both the 2004 and 2010 federal reviews. The 2010 CFSR found that the frequency and quality of visits between caseworkers and children were sufficient to ensure adequate monitoring of the child’s well-being and promote attainment of case goals in only 77.5 percent of the foster care cases reviewed.

93. Recent data show that DCYF continues to fail to provide adequate caseworker visitation to children in foster care. In FFY 2013, DCYF made only 81 percent of required monthly visits to children in DCYF custody, a substantial departure from the federal requirement of 90 percent (to become 95 percent in FFY 2015) and the ninth lowest performance in the country.

94. State data confirm that each month hundreds of children in DCYF care go unseen by DCYF. In March 2012, for example, almost a third of children in out-of-home care (771 out of a total of 2,612) did not have a documented face-to-face contact. In addition, hundreds of children go unseen for periods of more than a month. State data reflect that for the period from October 2011 through July 2012, one or two monthly visits were missed for over 600 children, three to five visits were missed for over 200 children, and six or more visits were missed for more than 50 children.

95. Even when visits with children in foster care occur, they are often conducted not by family services caseworkers but instead by child support technicians (“CSTs”). Tellingly, DCYF revised its policy in 2009 to permit contact between CSTs and children to meet the monthly visitation requirement for children in foster care. However, visits with CSTs —

who do not have the same education, expertise, or training as caseworkers — are not an adequate substitute for regular visits with a child’s family services caseworker.

96. With such low face-to-face visitation rates, DCYF is unable to ensure that the children in its foster care custody are safe and that their basic needs are being met. As the persistently high rates of abuse in care show, children in foster care in Rhode Island are not safe. The harmful and dangerous situation in which children in foster care find themselves is a direct result of DCYF’s failure to ensure that caseworkers regularly visit them.

3. DCYF Operates an Inadequate Licensing Unit, Resulting in a Chronic Shortage of Safe and Licensed Placements

97. DCYF has established a Licensing Unit charged with (1) processing applications submitted by prospective foster parents and foster care providers seeking licensure to furnish foster care services in Rhode Island, (2) ensuring that DCYF-licensed family foster homes, group homes, and institutions where children are placed for foster care services comply with minimum state safety requirements, and (3) responding to reports of licensure or regulatory violations involving DCYF-authorized family foster homes, group homes, or institutions.

98. A properly administered licensing process would enable DCYF to timely process applications and to screen out potentially unsafe or unsuitable foster care providers. Chronic understaffing of the Licensing Unit, however, results in delayed processing of applications, inadequate oversight and enforcement of licensing regulations, and the regular use of unlicensed placements — practices that suppress the number of available foster homes and place children’s safety at ongoing risk.

99. Professional standards require that agency regulatory units maintain structures for the development and implementation of “a staffing plan that takes into account effective workloads and supervisory/managerial span of control” as well as the use of a “formal

continuous quality improvement system” with “clear performance benchmarks” and systematic monitoring. On information and belief, DCYF’s Licensing Unit fails to comply with these standards.

100. DCYF has never conducted a workload study to determine how many cases each licensing worker can reasonably handle. As a result, these workers historically have been grossly overburdened, leading to a backlog of more than 500 unprocessed applications and a pattern of inadequate inspections. Although state regulations require that licenses must be issued or denied within 90 days of completion of the licensing process, DCYF does not actually track the timeliness of licensing decisions on an aggregate basis, and historically foster families have waited many months for approval. In the face of this chronic backlog, the state resorted and continues to resort to unlicensed placements to meet demand, though such placements violate policy and expose children to serious safety risks. On information and belief, the licensing unit remains seriously understaffed.

101. Rhode Island statute provides that no non-kin foster care provider may furnish care for a child without holding a valid, current license. To secure a license in Rhode Island, the foster care provider must satisfy a set of mandatory eligibility requirements that include undergoing a criminal background check, a home safety study, training and orientation as a caretaker, and a medical clearance. Yet, DCYF routinely places children in unlicensed non-kin placements. On April 1, 2012, 159 children — over 13 percent of children in care at the time — were in such placements. Seventy-three of those children were placed in 58 unlicensed non-kin homes, while the other 86 children were placed in unlicensed group home, shelter, and private agency placements. Nineteen of the 58 homes had expired licenses, while it appears the other 39 had no recent license.

102. Relatives who seek to be caregivers of children in DCYF custody must be certified, which involves meeting essentially the same standards as required to be a licensed foster parent. Yet children in DCYF custody are routinely placed in the care of relatives while certification is still pending or after the license has expired. As of April 2012, 200 children were placed in unlicensed relative homes. Twenty-eight of those children were placed in homes whose licenses had expired — the majority more than a year prior, and some as far back as the year 2000.

103. The Licensing Unit is also charged with the licensure of the child-placing agencies with which DCYF contracts for the provision of foster care services and placements such as independent living arrangements, supervised apartment living, residential group care facilities, family foster homes, and adoptive homes. Historically, however, DCYF has not enforced licensing requirements for child-placing agencies and has allowed almost one-third of such agencies to operate without an active license.

104. All licensed facilities are required to undergo an annual inspection and a bi-annual relicensing process. Additionally, DCYF's standard practice requires program monitors to visit residential-care facilities once every three months. Yet, DCYF fails to ensure that inspections and re-licensing activities are timely and adequate to protect the safety of children in care. Such oversight and monitoring is all the more imperative given that certain safety standards are more relaxed at re-licensing than at initial licensing. For example, DCYF does not require new nationwide criminal background checks for all adults in a foster home during relicensing.

105. DCYF also takes a reactive approach to licensing and safety, often addressing issues only after they have surfaced in the media. For example, in 2010, DCYF

decreased the number of program monitors from six to three — a 50 percent workforce reduction. That same year, DCYF was forced to close a group facility that had not been inspected by a monitor for over one year after the press revealed excessive punishment and other extensive licensing violations at the facility.

106. More recently, in July 2012, investigators temporarily closed a group home in Middletown due to conditions “not suitable for the children.” In the wake of significant media attention to this event, then-Director Janice DeFrances ordered an “inspection blitz” of all 76 residential facilities in the state, including 42 group homes providing care to over 400 children in DCYF custody. These inspections uncovered myriad violations “ranging from littered lawns to broken windows and ‘time-out’ rooms with no furnishings and bare walls.” In the opinion of the state’s Child Advocate, these “physical inspections only scratched the surface of the problems” in group care facilities for children in care.

107. DCYF also does not take steps to regularly review and update its licensing policies in order to ensure children’s safety. In February 2013, a residential care worker died from a heart attack while restraining a teenager who was in DCYF custody. It was later revealed that the worker abused cocaine, and that the Department had no mandatory drug or alcohol screening requirements for residential workers. Rather than revise its requirements, DCYF suspended the facility’s license, and the operation soon shut down.

4. CPS Investigators Are Overburdened and Thus Unable to Adequately Investigate Abuse and Neglect in Care

108. In addition to the Licensing Unit, DCYF maintains a Child Protective Services (“CPS”) Division that is responsible for the intake, screening and investigation of allegations of child abuse and neglect, including reports of alleged abuse and neglect involving children already removed into DCYF foster care custody. The CPS Division historically has

employed a general staff of investigators, deployed regionally around the state, who investigate allegations of abuse and neglect occurring to children in non-foster care settings. Additionally, the CPS Division historically has employed two “Institutional Investigators” who are specially tasked with investigating allegations of abuse and neglect occurring to children in foster care placements, including congregate care facilities. Notwithstanding this specialized staff, it has been routine practice within the CPS Division to assign investigations of abuse and neglect involving children in DCYF foster care custody to the general staff of investigators whenever the two Institutional Investigators are unavailable.

109. It is well recognized within the child welfare field that CPS investigators who are overloaded with unmanageable caseloads will not be able to effectively conduct and complete investigations. In order to assure manageable investigative caseloads, it is incumbent upon DCYF to undertake an assessment of the time required to perform the CPS investigator function and tasks, as delineated in agency policy, and to establish workload standards based upon such a time assessment. DCYF’s fundamental obligation to provide an adequate workforce is reflected in widely-accepted professional standards. Standards published by the Child Welfare League of America (“CWLA”) provide:

Workload standards [for child protective services staff] should be established that make it possible for staff members to complete required tasks and activities. Once workload standards are established, the agency should advocate aggressively for the resources needed to meet those standards...Every agency should conduct a workload analysis to determine the appropriate workload standards for its child protective services staff.

Standards published by COA provide that the public agency should annually conduct an assessment of workforce needs and composition. In the absence of a system-specific workload analysis, professional standards supply well-accepted guidance on what constitutes a manageable CPS caseload. CWLA standards require that CPS investigators carry no more than 12 active

investigations per month. COA standards also require that CPS investigator caseloads not exceed 12 active investigations.

110. Within a reasonable period of time in the past, DCYF has not conducted a workload analysis to determine the appropriate workload standard for investigators within the CPS Division operating under current agency policy and practice. Likewise, DCYF policy does not establish any such workload standard.

111. In the absence of established and consistently enforced workload standards within DCYF, investigators in the CPS Division have carried caseloads far exceeding the CWLA and COA standards calling for no greater than 12 active investigations per worker. For example, DCYF monthly data for the six-month period from February 2012 through August 2012 indicate that the vast majority of CPS Division investigators carried monthly caseloads exceeding the CWLA and COA standards. During this same period, the majority of CPS Division caseworkers were responsible for 30 or more investigations each month, over *twice* today's CWLA and COA workload standard of 12.

112. The high caseloads carried by CPS Division investigators are patently unmanageable and prevent them from consistently conducting timely and quality investigations, a vital element of any child welfare agency's safety net. Indeed, DCYF monthly data for the period January 2010 through April 2012 reveal that scores of CPS Division investigations were not completed within prescribed time limits. During this time period, anywhere from 94 to 202 investigations each month exceeded the maximum time allowed under DCYF policy for completion of an investigation.

113. Likewise, DCYF monthly data for January 2013 reveal that 419 CPS Division investigations were past due as of that time and that 52 of these overdue investigations

were on the caseloads of the two Institutional Investigators alone. The high caseloads within the CPS Division and the consequent untimely and inadequate CPS investigations place children in DCYF custody at an unreasonable and ongoing risk of harm.

5. As a Result of These Systemic Failings, Plaintiff Children Are Abused and Neglected in Foster Care

114. Inadequate caseworker monitoring and visitation, licensing oversight, and investigative practice create egregious safety risks for all children in DCYF foster care. There is no clearer example of this harm than the abuse or neglect of children while in foster care.

115. Children in DCYF foster care custody suffer abuse and neglect with startling frequency. In the eight years since Plaintiffs initiated this lawsuit, an average of three children a month in DCYF's care have been maltreated while in state care. In only six years, between 2006 and 2012, children in DCYF care were subject to 482 confirmed allegations of abuse or neglect. In FFY 2013 alone, the state reported 71 incidents of maltreatment of children in DCYF foster care.

116. The rate at which children in the foster care custody of DCYF are abused or neglected routinely exceeds, by many multiples, the standard set by the federal government. In FFY 2013, 1.13 percent of children in Rhode Island foster care suffered abuse or neglect at least once that year, three and a half times the federal standard (of 0.32 percent) and the second highest rate of any state or territory in the country. According to preliminary data compiled by Yale University School of Medicine, and relied upon by DCYF, that rate rose in FFY 2014 to 1.19 percent of children in DCYF custody, over three and a half times the federal benchmark.

117. This high rate of abuse and neglect is longstanding. In the 13 years since the federal government began tracking maltreatment in foster care across states for the Child and Family Services Reviews, Rhode Island has never come close to meeting the accepted

benchmark. Each year since FFY 2004, for example, children in Rhode Island foster care have been maltreated at a rate between two and over four times the federal standard. In recent years, from FFY 2010 to FFY 2012, Rhode Island reported rates of abuse or neglect for children in foster care at between three and nearly four times the federal benchmark, the third highest rate in the country each year. Despite knowing that its maltreatment in care rate is among the worst in the nation, upon information and belief, in recent years Rhode Island has not directly prioritized safety in care as an area for reform.

B. Defendants Place Plaintiff Children in Inappropriate Homes and Institutions, Resulting in Serious Risk of Harm

1. Defendants Have Failed to Develop and Maintain a Sufficient Array of Foster Care Placements

118. As DCYF has acknowledged, for years it has failed to develop and maintain an array of foster care placements that meet the needs of the children in its care. As a result, Plaintiff Children are placed in inappropriate foster homes, are unnecessarily placed in shelters and institutions instead of family foster placements, and are separated from their siblings.

119. In the Statewide Assessment that DCYF submitted in 2003 as part of its federal review, the agency admitted that it was “not able to assure that children are placed in the types of placements that are the most family like and most appropriate for their individual needs, both at the time of initial entry and throughout their stay, because of a serious lack of foster family homes, resulting in demand for and use of all other types of placements. One of Rhode Island’s critical needs is for a sufficient number and type of foster homes so that the first placement in foster care is an appropriate match. We all too often place a child in a less than

ideal placement at the time of entry, which later increases the likelihood that a subsequent placement will need to be made.”

120. Over a decade later, this “serious lack of foster family homes” for foster children in Rhode Island continues unabated. In a 2013 hearing of the Rhode Island House Committee on Finance, DCYF’s then-commissioner admitted that the agency “desperately” needed more family-based foster placements and that “access into more community based services or support” for children who should be stepped down from institutional placements was “not readily available.” Rhode Island’s Child Advocate, Regina Costa, stated in testimony the following year that Rhode Island is “experiencing a crisis in the foster care system, with extremely limited resources available for the placement of youth.” And this crisis is worsening. Between June 30, 2012, and June 30, 2015, the number of licensed DCYF and private agency non-relative foster homes decreased by approximately 31 percent.

121. The Rhode Island Senate Task Force on the Department of Children, Youth and Families and the Family Care Networks found in its January 2015 report that “some Rhode Island children are placed in more costly settings simply because of a lack of a robust foster care system in the state.” Indeed, Rhode Island’s Child Advocate has reported that the number of DCYF children placed out of state almost doubled from July 2012 to July 2014. As the Child Advocate acknowledges, this practice is expensive for the state: the cost for just fourteen of these children who are placed in a single facility in Massachusetts is \$2,315,195 per year. Furthermore, removal from home and placement in foster care is inherently traumatic for children, and living in one’s home community minimizes that trauma by helping children maintain ties with parents and siblings and by avoiding unnecessary separation from friends, school, and local supports.

122. DCYF's chronic shortage of a sufficient number and variety of placements is due, in part, to its failure to recruit, license, train, and support prospective foster parents. Further, under DCYF's current system, potential foster parents may have to wait for an excessively long time to be licensed by DCYF. As acknowledged by the Rhode Island Senate Task Force on the Department of Children, Youth and Families and the Family Care Networks, the inadequate payments DCYF makes to foster parents to provide for children's room and board are another contributing factor. DCYF also has trouble retaining foster parents, in part because foster parents can feel ill-treated by the agency. Moreover, because DCYF does not collect or analyze aggregate data on its efforts to recruit foster homes, it is difficult to evaluate the efficacy of any such efforts.

123. Because DCYF does not have enough suitable foster care placements, it typically places Plaintiff Children in the next available bed, regardless of whether that placement meets children's needs and regardless of whether they will receive adequate care and supervision. The lack of sufficient foster care placements also leads to harmful placement moves when children are put in homes that do not meet their needs.

124. In addition, because of the inadequate array of placements available for children who enter foster care, DCYF has resorted to short-term, overnight placements. As the Child Advocate has disclosed in legislative testimony, "young children who have never been in DCYF care before have been forced to stay overnight at the DCYF offices" because of "limited foster placements and resources."

2. As a Result of the Inadequate Array, Plaintiff Children Languish in Congregate Care

125. Under federal law and reasonable professional standards, children taken into foster care custody must be placed in the least restrictive and most family-like environment

possible, taking into account the child's particular needs. Most children need to live with families and not in institutions. Absent circumstances where children require specialized care, institutions do not meet children's developmental and emotional needs and can cause them trauma.

126. Nevertheless, DCYF places an extraordinary number of Plaintiff Children in group homes, emergency shelters, and other institutions, even when such placements are not warranted by children's individual needs. In FFY 2013, the last period for which federal data are available, Rhode Island placed 29 percent of children in its foster care custody in group or institutional settings — more than twice the national average of 13 percent and the third highest percentage in the country. During the same period, DCYF placed 34 percent of the children newly removed from their homes in group or institutional settings — more than twice the national average of 14 percent and the highest percentage in the country.

127. Because DCYF typically places children in the next available bed, many children in state foster care custody end up spending time in emergency shelters. DCYF's reliance on shelter placements results in multiple short-term placements, even for young children who suffer the most from this instability. As of December 31, 2014, there were 40 children in out-of-home care who were placed in shelters, including four who were ages one to five and five children ages six to 13. As of June 30, 2015, 42 children in out-of-home care were living in shelters. For example, Named Plaintiff Cassie's sister spent over nine months in two shelters when she was six years old. Shelters are rarely, if ever, appropriate placements for children. They are not safe, nurturing, or healthy environments. Furthermore, it is far more expensive to maintain children in shelters than to maintain them with foster families.

128. Institutions are particularly damaging to infants and young children,

causing a variety of harms, including: delayed language development; poor mental development and adaptive skills; an increased risk of serious infectious illness; less stability; lower rates of adoption; and a greater likelihood of remaining in care.

129. Yet DCYF routinely places large numbers of infants and young children in institutions. As the Rhode Island Child Advocate has recognized, “[a]ll children need families, but young children in group care or shelters is a particularly time sensitive issue.” In FFY 2013, DCYF placed 8 percent of children who entered care during the fiscal year and were 12 or younger at the time of their current placement into group or institutional settings, substantially above the national average and the eighth highest percentage in the country.

130. DCYF places an even higher percentage of adolescents in institutional settings, despite the fact that living in a family setting is important for adolescents, who learn independence by looking to parents as authorities on maintaining relationships, developing self-reliance skills, following rules and evaluating and avoiding risks. In FFY 2013, DCYF placed 57 percent of children in its custody who were over age 12 in group or institutional settings, more than one and a half times the national average of 33 percent and the fourth highest percentage in the country.

131. Not only do institutional placements harm children who do not need them, they are not cost effective. Most children are best cared for in standard foster homes, but those children whose special needs preclude placement in regular foster homes can often have their needs met in a family-like setting by therapeutic foster care providers for a fraction of the cost of institutional care. The cost for generic foster care is between approximately \$14 and \$16 per day and the cost of treatment foster care in a family home in Rhode Island is on average approximately \$100 per day. In comparison, a group home placement starts at over \$100 and

ranges up to over \$300 per day, and therapeutic group home rates go as high as \$400 to \$600 per day.

132. Defendants' unnecessary reliance on institutional placements translates directly into fewer dollars available for ensuring that children in foster care are safe and that their needs are being met in the least restrictive, most family-like setting that is appropriate to their needs.

3. As a Result of the Inadequate Array, Plaintiff Children Are Separated from Their Siblings

133. Both reasonable professional standards and DCYF policy emphasize the importance of keeping siblings together when they are taken into foster care, unless one or more of the children has a serious need that justifies separation. Separating siblings should be the exception, not the rule.

134. However, in both the 2004 and 2010 federal reviews, placement with siblings was rated as an area needing improvement, and in both reviews Rhode Island failed to meet the federal performance standard related to preserving continuity of family relationships and connections. The 2010 Statewide Assessment reported that among the factors frequently associated with placing siblings separately was that "[p]lacement resources to accommodate the siblings group are not available." Named Plaintiffs Cassie, Andrew, Matthew, Erin, and Sean have all been separated from their siblings.

135. According to 2014 testimony of Rhode Island's Child Advocate, the "limited resources in the foster care system have resulted in," among other things, "[s]eparation of siblings who come into care."

136. DCYF's practice of separating siblings who do not need to be separated results in needless harm to children. Sibling relationships are often the main source of stability

in the life of a child in foster care and can be essential to minimizing the lasting ill effects of a child's time in state custody.

137. Defendants compound the harm of sibling separation by failing to ensure that siblings who are not placed together at least have regular and frequent visits with one another. The 2010 CFSR case reviews found that children in foster care visited with their siblings at least once per month in only 60 percent of the applicable cases. This is in line with DCYF's general practice of failing to maintain family connections for children in care. The 2010 CFSR also rated visits with parents and siblings in foster care to be an area needing improvement. That same year, DCYF admitted in its Statewide Assessment that high worker caseloads are a barrier to ensuring visits for children in foster care with their siblings and with their parents.

C. Defendants Do Not Provide Plaintiff Children with Required Timely and Appropriate Case Plans

138. When DCYF takes a child into foster care custody, it is required by federal law and DCYF policy to, in a timely manner and in consultation with the child's parents and other knowledgeable individuals, prepare and periodically update a written case plan that identifies the child's needs and permanency goal and that specifies the services that will be provided in order to meet those needs and achieve that goal. Case plans are vital to providing for a child's safety, permanency and well-being while in foster care and provide a blueprint for the steps that must be taken and the services that must be provided for that child.

139. Nevertheless, DCYF does not have a system in place to assure the timely preparation of appropriate case plans. Federal reviews in 2004 and again in 2010 found that DCYF failed to be in substantial conformity with the requirement that each child have a written case plan to be developed jointly with the child's parents that includes the required provisions.

140. Since 2010, DCYF has continued to fail to provide timely and complete case plans to children in foster care. For the period from February 1, 2015 to April 30, 2015, for example, only 43.94 percent of case plans reviewed by the agency in Region 1 (the most populous of the regions), 28.81 percent in Region 2, 65.38 percent in Region 3, and 47.29 percent in Region 4 were written in a timely manner and included measurable behavioral change outcomes.

141. Even when case plans are timely prepared or updated, key players are often excluded from the planning process. For example, the 2010 CFSR found that DCYF fails to adequately involve children (where appropriate) and parents in the case planning process.

142. DCYF acknowledged in its 2010 Statewide Assessment that workloads are a barrier to completing assessments and service plans in a timely and family-centered manner.

D. Defendants Do Not Provide Adequate Foster Care Maintenance Payments to Foster Parents

143. To comply with federal law and widely-recognized professional standards, DCYF must pay maintenance payments to family foster care providers that cover the costs associated with caring for children in foster care, including “payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, [and] reasonable travel to the child’s home for visitation...” By these standards, the maintenance payments that Defendants pay foster parents are inadequate.

144. DCYF’s website provides that the standard daily board rates paid to foster parents by DCYF are \$14.39 for children up to three years of age, \$13.64 for children between four and 11 years old, and \$15.79 for children ages 12 and older.

145. These rates were initially set in 2001 and were not raised in the subsequent 14 years, even to account for inflation.

146. The United States Department of Agriculture estimates that in 2013, the average middle-income, two-parent family in the urban Northeast spent approximately \$38.38 per day for a two-year-old, \$39.92 per day for a nine-year-old, and \$45.32 per day for a 16-year-old (not including health care costs). Even after taking into account adjustments to these amounts based on subsidies and other payments paid to foster parents by DCYF and costs included in the USDA estimates that do not fall within AACWA-covered costs, Rhode Island's standard board rates fall significantly below the USDA estimates.

147. Indeed, the Rhode Island Senate Task Force on the Department of Children, Youth, and Families and the Family Networks assessed the Rhode Island foster care maintenance payment rates in its January 2015 report and concluded that the rates are inadequate and need to be raised. The Task Force found that Rhode Island "has a low reimbursement rate for foster parents, with an average daily reimbursement rate of \$14.39 trailing the rates seen in Connecticut (\$26.93 per day) and Massachusetts (\$22.99 per day)." The Task Force recommended that DCYF raise the reimbursement rate for foster parents to within ten percent of the Massachusetts and Connecticut average daily rates.

148. Upon information and belief, to date, DCYF has failed to implement the recommendation of the Task Force.

149. This disparity translates into harm and risk of harm to Plaintiff Children, since financially overburdened foster parents are less able to provide proper care. It also drives away potential foster parents, thus placing a greater burden on the limited array of foster family

homes and contributing to the high rate of needless and harmful institutionalization of children in foster care.

150. Not only does DCYF fail to provide foster care maintenance payments to foster parents that cover the cost of statutorily-mandated items, it also fails to employ a methodology for calculating these payments that takes into consideration the actual cost of providing the items. In addition, DCYF fails to periodically review foster care maintenance payments to assure their continuing appropriateness, as required by federal statute.

VIII. Causes of Action

First Cause of Action

(Substantive Due Process Under the United States Constitution) (Asserted by All Named Plaintiffs and Plaintiff Children)

151. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

152. A state assumes an affirmative duty under the Fourteenth Amendment to the United States Constitution to protect a child from harm when it takes that child into its foster care custody.

153. The foregoing actions and inactions of Defendants, in their official capacities, constitute a failure to meet the affirmative duty to protect from harm all Named Plaintiffs and Class members, which is a substantial factor leading to, and proximate cause of, the violation of the constitutionally protected liberty and privacy interests of all Named Plaintiffs and Class members.

154. The forgoing actions and inactions of Defendants, in their official capacities, constitute a policy, pattern, practice, or custom that substantially departs from accepted professional judgment, practice, or standards and amounts to deliberate indifference to

the constitutionally protected rights and liberty and privacy interests of all Named Plaintiffs and Class members. As a result, all Named Plaintiffs and Class members have been and are at continuing and unreasonable risk of being harmed and deprived of the substantive due process rights guaranteed by the Fourteenth Amendment to the United States Constitution.

155. These substantive due process rights include, but are not limited to: the right to protection from harm while in government custody; the right to a living environment that protects Plaintiff Children's physical, mental, and emotional safety and well-being; the right to services necessary to prevent Plaintiff Children from deteriorating or being harmed physically, psychologically, or otherwise while in government custody, including but not limited to the right to safe and secure foster care placements, appropriate monitoring and supervision; the right to treatment and care consistent with the purpose of the assumption of custody by the Department of Children, Youth and Families; the right to receive care, treatment, and services, determined and provided through the exercise of accepted, reasonable professional judgment; and the right to be placed in the least restrictive placement according to a Plaintiff Child's needs.

Second Cause of Action

(First, Ninth, and Fourteenth Amendments to the United States Constitution) (Asserted by All Named Plaintiffs and Plaintiff Children)

156. Each and every allegation of the Complaint is incorporated as if fully set forth herein.

157. The foregoing actions and inactions of the Defendants, in their official capacities, amount to a policy, pattern, practice, or custom that substantially departs from accepted professional judgment, practice, or standards and to deliberate indifference to Plaintiffs' constitutional rights, and are the cause of the violation of such rights. As a result of Defendants' conduct, all Named Plaintiffs and Class members have been and are being severely harmed and

deprived of the liberty interests, privacy interests, and associational rights not to be deprived of a child-parent or a child-sibling family relationship, guaranteed by the First, Ninth, and Fourteenth Amendments to the United States Constitution.

Third Cause of Action

**(The Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 670 *et seq.*)
(Asserted by All Named Plaintiffs and Plaintiff Children)**

158. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

159. As a result of the foregoing actions and omissions by Defendants, in their official capacities, Defendants are engaging in a policy, pattern, practice, or custom of depriving all Named Plaintiffs and Class members of rights conferred on them by the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 670 *et seq.* (collectively the “Adoption Assistance Act”), and the regulations promulgated thereunder, 45 C.F.R. §§ 1355–57. These rights include: the right to timely written case plans containing mandated elements and the right of each Plaintiff Child to foster care maintenance payments paid to the foster parents or foster care providers with whom the child is placed that cover the actual cost of (and the cost of providing) the Plaintiff Child’s food, clothing, shelter, daily supervision, school supplies, reasonable travel to visitation with family, and other expenses. 42 U.S.C. §§ 671(a)(1), 671(a)(11), 671(a)(16), 672(a)(1), 675(4)(A); 45 C.F.R. §§ 1355.20, 1356.21(f)-(g), 1356.21(m)(1).

IX. Prayer for Relief

WHEREFORE, the Plaintiff Children respectfully request that this Honorable Court:

- a. Assert jurisdiction over this action;

- b. Order that Plaintiff Children may maintain this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
- c. Declare unconstitutional and unlawful pursuant to Rule 57 of the Federal Rules of Civil Procedure Defendants' violation of Plaintiff Children's substantive right to be free from harm under the Due Process Clause of the Fourteenth Amendment to the United States Constitution; Defendants' violation of Plaintiff Children's rights under the First, Ninth and Fourteenth Amendments to the United States Constitution; and Defendants' violation of Plaintiff Children's statutory rights under the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 670 *et seq.*;
- d. Enter a permanent injunction as to all children in the Class requiring Defendants to:
 1. Ensure that an assessment by qualified professionals be conducted to determine (i) the time required for FSU caseworkers and CPS investigators to adequately perform their tasks as defined in applicable law and policy and (ii) a manageable caseload for FSU caseworkers and CPS investigators taking into account the measure of time required to adequately perform tasks; and further to ensure that DCYF implements the findings of the workload study within a defined time period;
 2. Ensure that an assessment by qualified professionals be conducted to determine (i) the resources and processes necessary to ensure that Defendants have the capacity to monitor and enforce compliance with all licensing standards applicable to Defendants' foster care placements and to conduct timely and qualitatively adequate investigations of alleged licensing violations; (ii) the time period during which these resources and processes will be developed and implemented; and (iii) the steps necessary to develop and implement these resources and processes; and further to ensure that DCYF implements the steps determined to be necessary by the foregoing assessment within the time period determined by that assessment;
 3. Ensure that an assessment by qualified professionals be conducted to determine (i) the aggregate need of all children in the Class for an array of placements that will provide the necessary number, geographic distribution, and types of placement options for all children in the Class in order to

facilitate placement matching in the least restrictive, most family-like placement setting appropriate to meet the child's needs and to avoid the unnecessary placement of children in out-of-state and congregate care settings and the unnecessary separation of sibling groups, (ii) the time period during which this array of placements will be developed, and (iii) the steps necessary to implement these placement options; and further to ensure that DCYF implements the steps determined to be necessary by the foregoing assessment within the time period determined by that assessment;

4. Ensure that DCYF shall develop and implement policies providing for adequate visitation between parents and children of those parents removed into foster care and siblings one or more of whom has been removed into foster care;
 5. Ensure that DCYF shall take necessary action to provide adequate and timely case plans for children and adequate and timely services plans for their parents as required under 42 U.S.C §§ 671(a)(1), 671(A)(11), 671(A)(16) and 672(a)(1); and
 6. Ensure that DCYF shall determine and pay foster care reimbursement rates that fully meet the elements set forth in 42 U.S.C § 675(4)(A).
- e. Appoint a Neutral Monitor to oversee the implementation of this order and to issue periodic reports to the Court;
- f. Award to Plaintiff Children the reasonable costs and expenses incurred in the prosecution of this action, including reasonable attorneys' fees, pursuant to 28 U.S.C. § 1920, 42 U.S.C. § 1988, and Federal Rules of Civil Procedure 23(e) and (h); and
- g. Grant such other and further equitable relief as the Court deems just, necessary, and proper to protect Plaintiff Children from further harm by Defendants.

DATED: October 22, 2015

Respectfully Submitted:

/s/ Sara Michelle Bartosz

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CERTIFICATION OF FILING AND SERVICE

I hereby certify that on October 22, 2015, I electronically filed the foregoing document with the United States District Court for the District of Rhode Island, and it is available for viewing and downloading from the ECF system for all counsel of record. I further certify that on this day I caused to be served, via ECF, a copy of said document to the attorneys of record listed below:

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